IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1673 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANALAL HIRALAL BACHKANIWALA

Versus

SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 1673 of 2002

MS SUDHA R GANGWAR for Petitioner No. 1

MR AD OZA GOVERNMENT PLEADER for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3-4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/12/2002

ORAL JUDGEMENT

Heard learned advocate Ms.Sudha Gangwar on behalf of the petitioner and learned Government Pleader

Mr.A.D.Oza appearing on behalf of the respondent authorities.

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#. In the present petition, this Court at the time of issuing notice on 4th February, 2002 directed the petitioner to produce all the evidence in support of the contentions that the petitioner has been an agriculturist since 1968 or there before. Today, when the matter is taken up for hearing, learned advocate Ms.Sudha Gangwar has produced on record the relevant record. According to learned advocate Ms.Gangwar, the documents presented before this Court suggest various entries showing the petitioner being an agriculturist since 1968 or there before. A copy of the documents is served on learned Government Pleader Mr.A.D.Oza. Considering the contention raised by learned advocate Ms.Gangwar that this record though produced before the authority but the same has not been taken into consideration while deciding the matter. In view of this submission, RULE. Learned GP Mr.Oza waives service of Rule on behalf of the respondents and with consent of the learned advocates for the parties, this matter is taken for final hearing today.

#. According to the petitioner, the petitioner is an agriculturist holding agricultural land for last 36 years. The petitioner has purchased the land bearing Revenue Survey No.337 / 1 on 16th October, 1991 by registered sale deed and pursuant to the said purchase, necessary entry bearing Entry No.3042 has been made in the revenue record. However, after a period of nine years, the Collector, Surat has suo motu reviewed the entry and issued show cause notice under Section 108[6] of the Bombay Land Revenue Code to the petitioner which is produced on page-15 of the petition. In the said notice, it was informed to the petitioner that he should have to produce all the relevant record of being agriculturist. That said notice issued on 8th June, 2000. Against the said notice, reply was filed by the petitioner on 22nd August, 2000 wherein a specific averments has been made that the petitioner was having agricultural land in his name since 1967 and thereafter, various transactions have been arrived at by the petitioner with other persons and the details were given by the petitioner in the reply. Thereafter, the District Collector, Surat has examined this question in case registered Case No.155 / 2000 and come to the conclusion by order dated 31st March, 2001 setting aside the entry made in respect of the said impugned transaction being Entry No.3042 dated 23rd December, 1991. Against that

the petitioner has approached by way of revision before the Secretary, Revenue Department [Appeals], State of Gujarat. However, said revision also came to be rejected by the Secretary vide order dated 13th November, 2001.

#. Learned advocate Ms.Sudha Gangwar has submitted that the entire order passed by the Collector as well as the revisional authority are erroneous inasmuch as though the relevant records showing the name of the petitioner being agriculturist since 1966 were produced by the petitioner but non of the record and / or document has been taken into account by the respondent authority and the Collector has passed the adverse order against the petitioner, against which, revision also preferred, which also came to be rejected which is illegal. Therefore, she submitted that the view taken by the Collector as well as the revisional authority without considering the record of rights documents viz. Village Form No.7 and 12 produced before this Court today which reflects that the petitioner as an agriculturist since 1966 and necessary entry to that effect has been made in the revenue record in village form No.6 vide Entry No.21 / 322 dated 23rd November, 1966 which was certified on 20th December, 1966, is erroneous and the same requires to be interfered with by this Court. It is also submitted that recently also in the year 2001-02, even in respect of the land situate in Village Form 7 X 12 in respect of block No.110 Survey No.95 of village Ladavi, Taluka Kamrej wherein also the name of the petitioner is shown as occupier. It is also submitted that even land in question which is purchased by the petitioner is also agricultural land as per the reply given by the original land owner. Therefore, she submitted that let the authority may reexamine the matter in light of the documents produced by the petitioner before this Court and the authority after examination may pass appropriate orders after giving reasonable opportunity of being heard to the petitioner within some reasonable time.

#. Learned Government Pleader Mr.A.D.Oza appearing on behalf of the respondent authorities also submitted that if the said record produced by the petitioner before this Court is not taken into account or the same was not considered by the authority, in that view of the matter, the authority may be directed to reconsider the matter and to pass appropriate orders in accordance with law within sone reasonable time.

#. In view of submissions of the learned advocates for the parties, if the orders passed by the Collector dated 31st March, 2001 in Case registered vide No.155 / 2000 as

well as the order passed by the Secretary [Appeals], Revenue Department dated 13th November, 2001 interfered with by this Court and simultaneously, the matter requires to be remanded back to the Collector with suitable directions for reconsideration of the matter so that the Collector can examine the matter in light of the documents produced before this Court, which will be produced by the petitioner before the authority concerned and the authority will pass appropriate orders in accordance with law, will meet the ends of justice.

#. In view of above discussion, this petition succeeds and the same stands allowed accordingly. The orders passed by the Collector dated 31st March, 2001 in Case registered vide No.155 / 2000 as well as the order passed by the Secretary [Appeals], Revenue Department dated 13th November, 2001 impugned in this petition are hereby quashed and set aside with directions to the District Collector, Surat to re-examine the matter - Case No.155 / 2000 and after giving reasonable opportunity of hearing to the petitioner permitting the petitioner to produce relevant records including revenue records to establish the fact that the petitioner was and is an agriculturist since 1966 and on examination to pass appropriate orders after hearing both the parties in accordance with law within a period of six months from the date of receiving the copy of this order.

#. However, it is made clear that this Court has passed this order without entering into merits of the matter. Rule is made absolute to the extent indicated above. No order as to costs.

Direct Service is permitted.

Date : 5-12-2002 [H.K.Rathod, J.]

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